

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MEGGAN HILL, BENJAMIN GORGES, CHRISTINA CONTE WARTINBEE, COLEEN HILL, DENNIS LITTLE, FLORIAN NOUH, HEATHER SZUTKA, LAZY CAT ENTERPRISES, LTD., MARCO VERCH, MARINA HELENE ASCHABER, MELISSA COPELAND, MICHELLE MINNAAR, RENEE ROBLEY SMITH, and SARAH TRENALONE, Plaintiffs, v. TOAST, INC., dba TOASTTAB, INC. Defendant.	CIVIL ACTION NO. DEMAND FOR JURY TRIAL
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COMPLAINT

Plaintiffs MEGGAN HILL, BENJAMIN GORGES, CHRISTINA CONTE
WARTINBEE, COLEEN HILL, DENNIS LITTLE, FLORIAN NOUH,
HEATHER SZUTKA, LAZY CAT ENTERPRISES, LTD., MARCO VERCH,
MARINA HELENE ASCHABER, MELISSA COPELAND, MICHELLE
MINNAAR, RENEE ROBLEY SMITH, and SARAH TRENALONE (each a

SRIPLAW

CALIFORNIA ♦ GEORGIA ♦ FLORIDA ♦ TENNESSEE ♦ NEW YORK

“Plaintiff,” or “Photographer,” and collectively the “Plaintiffs,” or “Photographers”), by and through their undersigned attorneys, brings this Complaint against Defendant TOAST, INC. dba TOASTTAB, INC. for damages and injunctive relief, and in support thereof state as follows:

JURISDICTION, AND VENUE

1. This action arises under the Federal Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.* This Court is vested with subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (copyright jurisdiction).

2. This Court has personal jurisdiction over the Defendant because Defendant is present at its offices in this District, because Defendant is transacting, doing, and soliciting business in this District, and because Defendant caused plaintiffs injury in this District.

3. Venue is proper under 28 U.S.C. § 1391 (b)(1), (c)(2), and (d), and 28 U.S.C. § 1400(a).

THE PLAINTIFFS

4. MEGGAN HILL (“Hill”) is a professional photographer who resides in the United States. She is a classically trained chef whose work is inspired by

Midwestern food memories and meticulously-tested recipes. Her work has been featured on NPR, HuffPost, FoxNews, LA Times, Country Living, and more.

5. BENJAMIN GORGES (“Gorges”) is a professional photographer who resides in the United States. Gorges created FoxVallexFoodie in 2012 and has crafted each image for each recipe with a careful eye. His images are inspired by Midwestern comfort food and the most tantalizing dishes at your favorite restaurant. His work has been featured on BuzzFeed, MSN, Country Living, Parade, Oprah Daily, and more.

6. CHRISTINA CONTE WARTINBEE (“Wartinbee”) is a professional photographer who resides in the United States. For the last 11 years she has been an award-winning content creator and worldwide food judge. Her photos have been featured in magazines, publications, and websites around the world. Christina has also won several photography competitions earning her trips to Italy and France, among other prizes. Her work has been featured in MSN.com, Parade magazine, VoyageLA, ShoutoutLA, and other publications.

7. COLEEN HILL (“Hill”) is a professional photographer who resides in the United States. She is a self-taught photographer who has been photographing food since 2012. Her work is inspired by her years of professional culinary training as well as being a trained graphic designer.

8. DENNIS LITTLE (‘‘Little’’) is a professional photographer who resides in the United States. He is a classical trained professional chef with over forty years in the food and photography industry. He apprenticed with master photographer Scott Griswald for three years, working with many of the top fashion magazines. Since 2009 he has focused on creating mouth-watering images of the recipes he creates.

9. FLORIAN NOUH (‘‘Nouh’’) is a professional photographer and blogger who resides in the Netherlands. He is a self-taught photographer with a knack for details of food photography. He has been a photographer since 2015. His work has been featured in several websites, publications, and his own business page, including BuzzFeed and Vegan Food & Living.

10. HEATHER SZUTKA (‘‘Szutka’’) is a professional photographer who resides in the United States. She graduated in 2007 with a degree in Fine Arts with an emphasis in photography. Her work is the focus of her blog since 2017 and has been featured in publications such as, Chowhound, Parade Magazine, Spoon University, Bloglovin', Yummly, Delish, and The Baltimore Sun.

11. LAZY CAT ENTERPRISES, LTD. (‘‘Lazy Cat’’) is a private limited company in the United Kingdom. Anna Marcinowska is the director of Lazy Cat Kitchen. Ms. Marcinowska is a professional photographer who resides in the

United Kingdom. She has been photographing food for 9 years and her work is inspired by the interplay of colors and natural light. Her work is featured on Lazy Cat's website.

12. MARCO VERCH ("Verch") is a professional photographer who resides in Germany. Verch is a professional member of the Professional Photographers of America (PPA), and his work covers a wide range of topics, from aerial and drone photography, to sporting events, food, and travel, as well as staged photos for famous websites such as Mashable and Techcrunch.

13. MARINA HELENE ASCHABER ("Aschaber") is a professional photographer who created of Masalaherb.com in 2011 and is also a co-author at Paulmarina.com. Masalaherb.com is a recipe website with global recipes teaching readers to cook with spices and herbs. Paulmarina.com is a travel website for couples, covering Central Europe and South Asia.

14. MELISSA COPELAND ("Copeland") is a professional photographer who resides in Spain. For the past six years she has used her work to inspire vegan cooking from recipes gathered through her travels and experimentation. Her work has been featured on FeedFeed and other websites and publications.

15. MICHELLE MINNAAR ("Minnaar") is a professional photographer who resides in the United Kingdom. Since 2007 she has focused her photography

on good natural homemade food and collaborates with brands showcasing the best on the market. In 2017, her blog, Greedy Gourmet won Food Blogger of the Year, Top 10 Food Blog in UK, and Best Entertainment Blog in Essex. Previous clients include UKTI, Dr. Oetker, Weight Watchers, Go Compare, John Lewis, Lurpak, Lakeland, Riso Gallo and Cheapflights.

16. RENEE ROBLEY SMITH (“Smith”) is a professional photographer who resides in the United States. She is a self-taught photographer whose work highlights her Caribbean heritage. Her photography showcases her Caribbean culinary ambitions and she has been featured by Essence, Zing, Women of Silicon Valley, and the Kitchn.

17. SARAH TRENALONE (“Trenalone”) is a professional photographer who resides in the United States. She is a food photographer and traveler and holds a Bachelor's Degree in Fine Art Photography, and loves helping others learn how to eat more sustainable, garden-fresh food. Sarah's recipes and photography have been featured in both print and online in publications including the New York Daily news, Wild Alaska Company, Norwegian Seafood Council, Chowhound, Buzzfeed, Dish on Fish, and SheKnows.

THE DEFENDANT

18. Defendant Toast, Inc., dba Toasttab, Inc. (“Toast”), is a corporation

organized and existing under the laws of the state of Delaware. Toast lists a Principal Office Address at 2000 Riveredge Pkwy. NW, Ste. 885, Atlanta, GA, 30328. Toast may be served through its registered agent, Corporate Creations Network Inc., 2985 Gordy Parkway, 1st Floor, Marietta, GA, 30066.

FACTUAL BACKGROUND

The Plaintiffs' Ownership of the Photographs

19. Photographers identified 46 photographic works to Toast through counsel (**Exhibit 1**, each a “Photograph,” collectively the “Photographs”) prior to the filing of this Complaint. Prior to litigation and as the investigation has continued, Photographers, through counsel, provided Toast with the list attached as **Exhibit 1** of both the Photographs and the websites where the Photographers discovered the Photographs displayed in violation of the Photographers’ exclusive rights under the Copyright Act.

20. Investigation of other infringements is ongoing. Photographers will supplement this Complaint to add infringements discovered after this Complaint was filed, as needed.

21. Each of the Photographs was either created by, or commissioned on a work for hire basis by, one of the Photographers.

22. Each of the Photographers is the author, copyright holder, or exclusive licensee of one or more of the Photographs.

23. The Photographs -- in perspective, orientation, positioning, lighting, and other details -- are entirely original and creative. As such, the Photographs are protected under the Copyright Act.

24. The Register of Copyrights for the U.S. Copyright Office issued to the Photographers Certificates of Registration for many of the Photographs. Those Photographs not registered with the U.S. Copyright Office are foreign works that are exempt from the registration requirement in 17 U.S.C. § 411(a).

25. None of the Photographers transferred ownership of copyright to the Photographs to any other person or entity.

26. None of the Photographers ever granted a license for Toast to use any of the Photographs for any purpose.

Toast's Infringement of the Photographs

27. The Photographers discovered that Toast displayed the Photographs on pages of its website <https://www.toasttab.com> (the "Website"), copied and distributed the Photographs to its customers for use without required authorization or attribution.

28. Toast has never been licensed to use any of the Works for any

purpose.

29. Without authorization to do so, Toast accessed the Works, reproduced copies of the Works on its server, and displayed copies of the Works publicly on Toast's Website.

30. In late 2022, the Photographers discovered the unauthorized use of their Works on the Website.

31. Toast copied the Photographs without the Photographers' permission.

32. After Toast copied the Photographs, they made further copies and distributed the images on the internet to promote the sale of goods and services as part of Toast's online sales business.

33. Toast copied and distributed the Photographs for purposes of advertising and promoting Toast's business, and in the course and scope of advertising and selling its products and services.

34. Toast committed copyright infringement of the Work as evidenced by the documents attached hereto as **Exhibit 1**.

35. None of the Photographers ever gave Toast permission or authority to copy, distribute or display any of the Photographs for any purpose.

FIRST CAUSE OF ACTION

Direct Copyright Infringement – 17 U.S.C. §§ 501 *et seq.*

36. The Photographers incorporate the allegations of paragraphs 1 through 38 of this Complaint as if fully set forth herein.

37. The Photographers own valid copyrights in the Photographs.

38. Where required to do so, the Photographers registered the Photographs with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

39. Through display on the Website, Toast copied, displayed, and distributed the Photographs and made derivatives of the Photographs without the respective Photographer's authorization in violation of 17 U.S.C. § 501.

40. Toast performed the acts alleged in the course and scope of its business activities.

41. Toast's acts were willful.

42. The Photographers have been damaged.

43. The harm caused to the Photographers has been irreparable.

PRAYER FOR RELIEF

WHEREFORE, the Photographers pray that this Honorable Court:

a. Issue an order that Toast's unauthorized conduct violates The Photographers' rights under the Federal Copyright Act at 17 U.S.C. §101, *et seq.*;

b. Order Toast to account to The Photographers for all gains, profits, and advantages derived from their infringements of the Photographs;

c. Order Toast to pay the Photographers all profits and damages in such amount as may be found pursuant to 17 U.S.C. § 504(b) (with interest thereon at the highest legal rate) for all infringements of the Photographs; alternatively, maximum statutory damages in the amount of \$30,000 for infringement of each of the Photographs pursuant to 17 U.S.C. § 504 (c)(1); or such other amount as may be proper pursuant to 17 U.S.C. § 504;

d. Award the Photographers maximum statutory damages in the amount of \$150,000 for Toast's willful infringement of each of the Photographer's respective copyrights in the Photographs pursuant to 17 U.S.C. § 504 (c)(2); or such other amount as may be proper pursuant to 17 U.S.C. § 504;

e. Order Toast to pay the Photographers their costs of litigation and reasonable attorneys' fees in this action, pursuant to 17 U.S.C. § 505;

f. Order Toast to deliver to the Photographers all copies of the Photographs and all other materials containing such infringing copies of the Photographs in their possession, custody or control;

g. Order Toast, its agents, and its servants to be enjoined during the pendency of this action and permanently from infringing the copyrights of the

Photographers in any manner and from reproducing, distributing, displaying, or creating derivative works of the Photographs; and

h. Order such other and further relief as this Honorable Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all counts so triable.

Dated: December 28, 2023

Respectfully submitted,

/s/ Evan A. Andersen _____

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1.C

Counsel for the Photographers hereby certifies that this pleading was prepared in Times New Roman font, 14-point, in compliance with Local Rule 5.1.C.

Dated: December 28, 2023

Respectfully submitted,

/s/ Evan A. Andersen

EVAN A. ANDERSEN